

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

RYAN KERWIN,

Plaintiff,

v.

LT. WM MCCONELL,

Defendant.

Civil Action No. 05-93 Erie

MEMORANDUM ORDER

This civil rights action was received by the Clerk of Court on March 22, 2005, and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation [Doc. No. 86], filed on August 16, 2007, recommended that Defendant's motion for summary judgment [Doc. No. 73] be denied and that Plaintiff's cross-motion for summary judgment [Doc. No. 78] be denied. The parties were allowed ten (10) days from the date of service to file objections. Service was made on Plaintiff by certified mail and on Defendant. Plaintiff filed objections on September 10, 2007 [Doc. No. 89]. After de novo review of the motions and documents in the case, together with the Report and Recommendation and objections thereto, the following order is entered:

AND NOW, this 11th day of September, 2007;

IT IS HEREBY ORDERED that Defendant's motion for summary judgment [Doc. No. 73] is DENIED and Plaintiff's cross-motion for summary judgment [Doc. No. 78] is DENIED.

The Report and Recommendation [Doc. No. 86] of Magistrate Judge Baxter, filed on August 16, 2007, is adopted as the opinion of the Court.

s/ Sean J. McLaughlin
United States District Judge

cm: All parties of record

Susan Paradise Baxter, U.S. Magistrate Judge